

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Petitioner,

v.

Case No. 14-MC-0003-SLC

NEUROSCIENCE, INC.,
PHARMASAN LABS, INC., and
WHEATON PARTNERS, LLC

Respondents.

**PETITION FOR ORDER COMPELLING COMPLIANCE WITH
AUTHORIZED INVESTIGATIVE DEMANDS AID-WIW-2014-0001,
AID-WIW-2014-0002, AND AID-WIW-2014-0003**

Petitioner, the United States of America (the “United States”), through undersigned counsel, respectfully petitions the Court for an Order compelling NeuroScience Inc., (“NeuroScience”), Pharmasan Labs, Inc. (“Pharmasan”), and Wheaton Partners, LLC (“Wheaton”) to comply with Authorized Investigative Demands AID-WIW-2014-0001, AID-WIW-2014-0002, and AID-WIW-2014-0003 served on March 12, 2014 (the “AIDs”). The United States petitions the Court pursuant to 18 U.S.C. § 3486(c).

Jurisdiction and Venue

1. Subject-matter jurisdiction is proper pursuant to 18 U.S.C. § 3486(c), and 28 U.S.C. §§ 1331 and 1345.
2. Venue is proper pursuant to 18 U.S.C. § 3486(c) and 28 U.S.C. § 1391(b)(1).

3. The Court has personal jurisdiction over Respondents NeuroScience and Pharmasan because they have continuous and systematic contacts within the district. The Court has personal jurisdiction over Respondent Wheaton because Wheaton and employees and members of Wheaton performed services for NeuroScience and Pharmasan, which are the subject of the AIDs.

The Parties

4. Petitioner is the United States of America.

5. Respondent, NeuroScience, is a corporation incorporated in the State of Wisconsin with a principal place of business located at 375 280th Street, Osceola, Wisconsin.

6. Respondent, Pharmasan, is a corporation incorporated in the State of Minnesota with a principal place of business located at 375 280th Street, Osceola, Wisconsin.

7. Respondent, Wheaton, is a limited liability company organized in the State of Illinois with a principal place of business located at 1901 N Roselle Rd #640, Schaumburg, Illinois.

Background

8. Under 18 U.S.C. § 3486, The Attorney General has the authority to issue and serve a subpoena requiring the production of records or other things relevant an investigation of a federal healthcare offense, and testimony by the custodian of the things required to be produced concerning the production and authenticity of those things (hereinafter, “Authorized Investigative Demand”).

9. On June 28, 2001, the Attorney General delegated to each United States Attorney the authority to issue Authorized Investigative Demands pursuant to 18 U.S.C. § 3486, and further authorized each United States Attorney to re-delegate this authority to individual Assistant United States Attorneys.

Investigation of NeuroScience and Pharmasan

10. On March 12, 2014, federal agents executed Search Warrants 14-MJ-25, 14-MJ-26, and 14-MJ-37 to seize evidence, fruits, and instrumentalities of alleged federal healthcare offenses. On the same date, federal agents executed Seizure Warrant 14-MJ-27 to seize property traceable to proceeds from alleged federal healthcare offenses.

11. On March 12, 2014, federal agents served the AIDs on NeuroScience, Pharmasan, and CodeMap. The AIDs were issued and served pursuant to the authority delegated to the United States Attorney by the Attorney General in conformance with 18 U.S.C. § 3486.

12. The AIDs, a true and correct copy of which are attached as Exhibits A, B and C to this Petition, request records relevant to the United States' investigation of Pharmasan and NeuroScience. The United States is investigating NeuroScience and Pharmasan for potential violations of 18 U.S.C. § 371, 18 U.S.C. § 1347, 42 U.S.C. § 1320a-7b, and 42 U.S.C. § 263a. Specifically, the investigation relates to (1) Pharmasan's submission of claims for reimbursement of laboratory services to the Medicare program, TRICARE program, and private insurers; (2) NeuroScience and Pharmasan's dealings with providers that refer services to Pharmasan paid by federal

healthcare programs; and (3) Pharmasan's compliance with the Clinical Laboratory Improvement Act and amendments thereto.

13. As part of its investigation, the United States issued AID-WIW-2014-0003 directed at Wheaton. On information and belief, Wheaton and Wheaton's employees and members operating under the mark CodeMap, provided consulting services to NeuroScience and Pharmasan relating to billing for laboratory services. AID-WIW-2014-0003 seeks records relating to any services performed by CodeMap.

NeuroScience, Pharmasan, and CodeMap's Failure to Fully Comply with the AIDs

14. The deadline for compliance with the AIDs was March 19, 2014. NeuroScience and Pharmasan have asserted that any documents collected and generated by CodeMap, along with any communications between CodeMap and NeuroScience are protected from disclosure as work-product and/or attorney-client privilege communications. As a result, Wheaton has not produced any records, and NeuroScience and Pharmasan have withheld various records responsive to the AIDs.

15. NeuroScience and Pharmasan specifically asserted their claim of privilege in correspondence dated April 2, 2014, a true and correct copy of which is attached as Exhibit D. The United States responded to NeuroScience and Pharmasan in correspondence dated April 9, 2014 indicating that it did not agree with the assertion, a true and correct copy of which is attached as Exhibit E. The United States conferred with counsel for NeuroScience and Pharmasan on April 22, 2014, and the parties agreed that the Court should resolve the privilege assertion.

16. In addition to withholding documents relating to CodeMap's services, NeuroScience and Pharmasan have asked for repeated extensions of the response date on the AIDs. On March 31, 2014, NeuroScience and Pharmasan agreed to produce records on April 15, 2014 and provide confirmation of whether the responsive documents were seized pursuant to the Search Warrants; they did not. NeuroScience and Pharmasan claim that they will provide a stack of records on or about April 24, 2014, and another production of records on or about April 30, 2014. NeuroScience and Pharmasan have given no indication of when they intend to fully comply with the AIDs.

Relief Requested

WHEREFORE, Petitioner, United States, respectfully petitions that the Court:

1. order that communications between employees of NeuroScience and Pharmasan and CodeMap are not subject to the attorney-client privilege;
2. order that documents and tangible items generated by CodeMap or by NeuroScience and Pharmasan employees for CodeMap's services are not subject to work-product doctrine protection;
3. order NeuroScience to fully comply with AID-WIW-2014-0001 and produce all records requested by May 16, 2014;
4. order Pharmasan to fully comply with AID-WIW-2014-0002 and produce all records requested by May 16, 2014;
5. order Wheaton to fully comply with AID-WIW-2014-0003 and produce all records requested by May 16, 2014; and

6. grant such other and further relief as the Court deems necessary and appropriate.

Dated this 24th day of April, 2014.

Respectfully submitted

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